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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/756,269

01/14/2004

George M. Halow

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EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

09/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/756,269	Applicant(s) HALOW, GEORGE M.	
	Examiner FRANK I. CHOI	Art Unit 1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-9, 13-41 and 54-66.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the amendment has not been entered. As such, and because the arguments have been directed to nonentered claim 42, the rejection of claims 1-9, 13-41 and 54-66 is maintained for the reasons of record.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/John Pak/
 Primary Examiner, Art Unit 1616

Continuation of 3. NOTE: The Specification and claims raise new issues that would require further consideration and/or search and raise the issue of new matter as follows: Daltons was not disclosed in the original Specification and claims; there is no basis in the original specification for the amendment to paragraph 0010 that reason for lack of osmotic imbalance is the relatively low volume and relatively fast action of the method and that it is not necessary to use electrolytes with the PEG/sodium phosphate solution to prevent an osmotic imbalance, the amendment to paragraph 0013 that sodium phosphate stimulates short-term hyper-motility which causes fecal matter to move through the bowels and that PEG maintains this hyper-motility which assures a clean bowel for examination, the amendment to paragraph 0015 that the combined amounts first stimulate hypermotility and then maintain this hypermotility, the amendment to paragraph 0021 that not electrolytes need to be added to correct an osmotic imbalance and that the purpose of the clear liquid diet is to hydrate the patient so as to not obscure pathological features present in the colon during examination; the amendment to paragraph 0022 constitutes new matter because the optional adjuvants in the original specification could be added to correct an osmotic imbalance, whereas the deletion of said purpose expands the scope of said adjuvants; there is no basis for the amendment in paragraph 0030 that the purpose for the colonoscopy was used to look for a possible cause of the diarrhea as there could have been other reasons for the colonoscopy and there is no basis for the amendment that no complaints were voiced by the patient (the purpose and lack of complaints may have been true, nonetheless, the specification as originally filed did not state the same); there is no basis in the specification as originally filed for the amendment to the abstract that the sodium phosphate powder stimulates short-term hypermotility of the intestines and that PEG maintains this hypermotility or that no osmotic imbalance necessitating the administration of electrolytes is induced. Since claim 42 refers to hypermotility, osmotic imbalance, initiating and maintaining diarrhea by use of the phosphate powder and PEG, respectively and Daltons, new matter is raised. Further, new claim 42 by virtue of said terms which were not used previously would require further search and consideration. As such, the amendments would not place the Application in better form for appeal by reducing the issues for appeal.

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